

## Message Text

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ACTION ARA-17

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FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 7423

INFO USCINCSO

AMCONSUL CALI UNN

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C O N F I D E N T I A L BOGOTA 3871

E. O. 11652: GDS

TAGS: PINS, CO

SUBJECT: CONTINUATION OF EL URBAN NET COURT MARTIAL

USCINCSO FOR POLAD

REF: BOGOTA 2406

SUMMARY: THE COURT MARTIAL OF THE ALLEGED MEMBERS OF THE ELN URBAN NET WAS RECESSED TEMPORARILY ON APRIL 28 FOLLOWING CHARGES BY THE JUDGE ADVOCATE GENERAL OF THE ARMY OF PROCEDURAL IRREGULARITIES AND A STATEMENT BY HIM THAT THE TRIAL SHOULD BE DECLARED NULL AND VOID AND PROCEEDINGS STARTED OVER FROM SCRATCH. FOLLOWING A BRIEF RECESS, THE PRESIDENT OF THE COURT MARTIAL IGNORED THE JAG'S OPINION AND CONTINUED THE TRIAL. THE PROSPECT FOR EVENTUAL NULLIFICATION REMAINS, AND PUBLIC RESPECT FOR MILITARY JUDICIAL PROCEDURES HAS PROBABLY BEEN FURTHER ERODED. END SUMMARY.

1. ON APRIL 28, THE PRESIDENT OF THE ELN URBAN NET COURT MARTIAL, COLONEL GUSTAVO MOURE RAMIREZ DECLARED A RECESS FOLLOWING A VISIT TO BUCARAMANGA, THE SITE OF THE COURT MARTIAL, BY THE JUDGE ADVOCATE GENERAL OF THE ARMED FORCES, GENERAL CARLOS LOMBANA CUERVO. GENERAL LOMBANA CONDUCTED INTERVIEWS WITH THE DEFENDANTS, DEFENSE  
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LAWYERS AND MILITARY AUTHORITIES IN AN ATTEMPT TO INFORM HIMSELF CONCERNING THE DEVELOPMENT OF THE TRIAL. THE PRESS ALSO REPORTED THAT SOME OF THE 47 ELN SUSPECTS WHO HAD BEEN GRANTED PROVISIONAL LIBERTY HAD BEEN RECALLED TO TESTIFY.

2. THE JUDGE ADVOCATE GENERALS VISIT WAS THE RESULT OF A SERIES OF COMPLAINTS REGISTERED BY THE ELN DEFENDENTS AND THEIR ATTORNEIES RELATING TO PROCEDURAL MATTERS, THE TREATMENT THEY HAD RECEIVED DURING THE COURT MARTIAL AND THEIR LEGAL STATUS BEFORE THE COURT. SOME OF THE DEFENDANTS, ACCORDING TO PRESS REPORTS, ADMITTED THEIR MEMBERSHIP IN THE ELN AND DEMANDED THAT THEY BE CONSIDERED POLITICAL PRISONERS. THE DEFENSE LAWYERS ALSO COMPLAINED THAT VARIOUS MEMBERS OF THE PROSECUTORS STAFF HAD BEEN INVOLVED IN THE CAPTURE AND DETENTION OF THE DEFENDANTS.

3. ON MAY 2 THE JUDGE ADVOCATE GENERAL MADE A STATEMENT, WHICH RECEIVED WIDE PRESS COVERAGE, TO THE EFFECT THAT BECAUSE OF PROCEDURAL IRREGULARITIES IN THE COURT MARTIAL IT SHOULD BE DECLARED NULL AND VOID AND STARTED AGAIN FROM SCRATCH. THE JUDGE ADVOCATE GENERAL PRESENTED HIS OPINIONS TO THE PRESIDENT OF THE COURT MARTIAL WHO PROLONGED

THE RECESS IN ORDER TO CONSIDER THE MATTER. IN HIS PUBLIC STATEMENT THE JUDGE ADVOCATE GENERAL UNDERLINED THAT THE PRESIDENT OF THE COURT MARTIAL WAS UNDER NO OBLIGATION TO ACCEPT HIS OPINION IN THE MATTER, AND THAT HE ( THE JUDGE ADVOCATE GENERAL) HAD COMPLIED WITH HIS RESPONSIBILITIES BY PRESENTING HIS OPINION ON THE MATTER. GENERAL LOMBANA SAID THAT THERE HAD BEEN PROCEDURAL ERRORS FROM THE VERY MOMENT THAT THE COURT MARTIAL HAD BEEN CONVOKED AND THE NULLIFICATION WAS THEREFORE REQUIRED BY THE MILITARY PENAL CODE.

4. THERE WAS NO PUBLIC REACTION BY SENIOR MILITARY OFFICERS TO THE JUDGE ADVOCATE GENERALS STATEMENT.

5. ACCORDING TO THE PRESS ANALYSIS OF THE CASE, THE MOST SIGNIFICANT PROCEDURAL ERROR RESULTED FROM THE FACT THAT THE COMMANDER OF THE 5 TH BRIGADE, WHICH IS THE SEAT OF THE COURT MARTIAL, ESTABLISHED THE COURT WITHOUT PROPER JUDICIAL AUTHORITY.

6. IN FURTHER PRESS REPORTS, THE COMMANDER OF THE FIFTH BRIGADE, GENERAL RAMON ARTURO RINCON ( WHO IS ALSO THE JUDGE OF FIRST INSTANCE

FOR THE COURT MARTIAL) REFUTED SOME OF THE CHARGES RELATING TO  
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MALTREATMENT AND DENIED THAT ANY OF THE PROSECUTION ATTORNEYS  
WERE MEMBERS OF MILITARY INTELLIGENCE.

7. THESE EVENTS THREW THE TRIAL INTO CONFUSION, AND THE PRESS  
REPORT-

ED A CONSENSUS THAT THE TRIAL WOULD BE ANNULLED. NEVERTHELESS, ON  
MAY 7, THE PRESIDENT OF THE COURT TERMINATED THE RECESS AND ORDERED  
THE CASE CONTINUED. COLONEL MOURE' S LACONIC PUBLIC STATEMENT  
THAT THE TRIAL WOULD CONTINUE GAVE NO EXPLANATION OF HIS REJECTION  
OF  
GENERAL LAMBONA' S OPINION.

8. COMMENT. THIS LATEST INTERVENTION BY MILITARY JUDICIAL AUTHORITIES  
IS ANOTHER IN THE LONG SERIES OF IMPEDIMENTS TO THE ELN TRIAL  
WHICH HAS BEEN CHARACTERIZED BY DELAYS, PERIODIC RELEASE OF  
DEFENDANTS, COMPLAINTS AND A LACK OF SENSITIVITY TO PUBLIC OPINION ON  
THE PART OF MILITARY AUTHORITIES. AN EARLIER DEMAND BY THE FIRST  
PROSECUTING ATTORNEY MAYOR RAMIRO ZAMBRANO ON JANURAY 5, TO THE  
EFFECT THAT THE MAJORITY OF THE DEFENDANTS SHOULD BE RELEASED  
AS THEY HAD ALREADY COMPLETED IN PRE TRIAL SUSPENSION THE SIX MONTH  
MINIMUM SENTENCE FOR REBELLION RESULTED, ACCORDING TO VARIOUS  
PRESS  
REPORTS IN HIS TRANSFER, ALTHOUGH EXACTLY THAT JUSTIFICATION WAS LA-  
TER USED FOR THE RELEASE OF 47 OF THE DEFENDANTS. ALTHOUGH THE  
COURT MARTIAL IS NOW IN SESSION AGAIN, IT REMAINS UNDER A CLOUD,  
WITH ITS ULTIMATE VALIDITY VERY MUCH IN DOUBT: RESPECT FOR MILITARY  
JUSTICE HAS PROBABLY BEEN FURTHER ERODED.  
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\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* CONFIDENTIAL

## Message Attributes

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**Decaption Date:** 01 JAN 1960  
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**Disposition Approved on Date:**  
**Disposition Authority:** golinofr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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**Review Authority:** golinofr  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 23 JAN 2002  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <23-Jan-2002 by martinjw>; APPROVED <08 FEB 2002 by golinofr>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
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**To:** ARA  
CALI  
MEDELLIN  
SECSTATE WASHDC  
USCINCSO  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

